

HOUSE BILL 1817

By Brooks K

AN ACT to amend Tennessee Code Annotated, Section 63-6-204 and Title 68, Chapter 11, Part 2, relative to the employment of physicians by licensed nursing homes and their affiliates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following new section:

68-11-2__.

(a) For the purpose of this section, unless the context requires otherwise:

(1) "Affiliate of a nursing home" means an entity that directly or indirectly is controlled by, or is under common control with, a nursing home licensed under this chapter. "Affiliate" does not mean a health maintenance organization licensed under title 56, chapter 32. In the case of a nursing home, employment of the physician may be done directly or indirectly through a separate entity that has common or overlapping ownership as the entity that owns, controls, or manages the nursing home;

(2) "Anesthesiologist" means a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances, or a dentist licensed in this state who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977;

(3) “Emergency physician” means a physician who has either completed a residency in emergency medicine, or practiced emergency medicine full time for a three-year period, and whose practice is limited to emergency medicine. “Emergency physician” does not include a physician who has been previously employed to provide non-emergent medical services who, over a period of twelve (12) months or more, becomes a full time emergency physician and who remains employed by mutual agreement;

(4) “Employing entity” means a nursing home licensed under this chapter, or an affiliate of such a nursing home, that employs one (1) or more physicians. “Employing entity” does not mean a health maintenance organization licensed under title 56, chapter 32;

(5) “Nursing home” means:

(A) A nursing home as defined in § 68-11-201 that is licensed in Tennessee; or

(B) An affiliate of a nursing home that is licensed in this state;

(6) “Pathologist” means a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(7) “Physician” means a person licensed pursuant to title 63, chapter 6 or 9; and

(8) “Radiologist” means a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy, and radiation oncology.

(b) Nothing shall prohibit a nursing home licensed under this chapter or an affiliate of a nursing home from employing a physician, other than radiologists,

anesthesiologists, pathologists or emergency physicians licensed under title 63, chapter 6 or 9, subject to the following conditions:

(1) An employing entity shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(2) An employing entity shall not restrict or interfere with physician referral decisions, unless:

(A) The physician so employed has agreed in writing to the specific restriction at the time that the contract is executed;

(B) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(C) The employing entity discloses the restriction to the patient;

(3) If there is any dispute relating to subdivision (b)(1) or (b)(2), the employing entity shall have the burden of proof;

(4) In any event, nothing in this section shall prohibit a licensed physician, group of licensed physicians, including, but not limited to, a physicians' professional corporation registered under title 48, chapter 101 from employing physicians;

(5) An affiliate of a nursing home that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, or the ownership of property and facilities used in the provision of health care services;

(6) A nursing home that employs a physician pursuant to this section shall be subject to the authority of the applicable licensing board under this chapter in connection with employment of physicians. Any violation of this subdivision (b)(6) by an affiliate shall subject any nursing home at which the physician has staff

privileges and that controls or is under common control with the affiliate to the penalties and sanctions applied to nursing homes that employ physicians;

(7) No radiologist, anesthesiologist, pathologist or emergency physician may be employed by a nursing home and no nursing home may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services;

(8) An employing entity shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, an employed physician relinquish staff privileges or the rights related to staff privileges upon the commencement of, upon any event during the pendency of or at the termination or conclusion of the employment relationship. In any event, nothing in this section shall be construed as affecting or negating the ability of an employing nursing home to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in facility policy or the staff bylaws. A nursing home shall not substitute physician employment contracts for staff privileges.

Nonemployed and employed physicians holding staff privileges at a nursing home that is an employing entity or long term care facilities at which employed physicians hold staff privileges that are affiliates of employing entities shall enjoy the same privileges, rights and protections with respect to staff membership.

Employment of a physician shall not affect any other physician's staff privileges.

A physician who holds membership on staff at a nursing home that is an employing entity or a nursing home where an employed physician holds staff privileges that are affiliates of employing entities shall be provided with the rights

and protections, including rights of self-governance, afforded by the applicable state licensing board and, when accredited, the accrediting entity or agency;

(9) If a physician, in connection with a claim for breach of contract or other dispute related to § 63-6-204, establishes in a court of competent jurisdiction or other forum, including in a peer review action or arbitration proceeding, that the conditions of § 63-6-204 have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration or peer review defense and a reasonable attorney's fee; and

(10) Employing entities shall not restrict or interfere with patient referral decisions in a manner that unnecessarily increases the cost to the patient of the medical services provided.

(c)

(1) An employing nursing home shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship; provided, however, the employing entity may prohibit the employed physician's right to enter into another employment relationship with a nursing home or an affiliate of a nursing home if:

(A) The maximum allowable area of the restriction is the service area where the nursing home is located; or a fifty (50) mile radius from the nursing home; and

(B) The duration of the restriction is two (2) years or less, unless a longer period, not to exceed five (5) years, is determined by mutual agreement of the parties in writing to be necessary to comply with federal statutes, rules, regulations, or IRS revenue rulings or private letter rulings;

(2) "Employment relationship" as used in this subsection (c) means only the employment of a physician by a non-commonly owned nursing home for the purposes of providing attending physician services to that facility or a commonly-owned facility's patients. Employment relationship does not include any independent contractor or employment relationship for the purposes of providing medical director services, nor the independent practice medicine outside of an employment relationship with another non-commonly owned nursing home.

SECTION 2. Tennessee Code Annotated, Section 63-6-204, is amended by adding the following new subsection:

() Notwithstanding the restrictions contained in this section, a nursing home may employ a physician pursuant to Section 1 of this act.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.